IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3952 OF 2004.
IN
CIVIL APPLICATION NO.2364 OF 2004.
IN
FIRST APPEAL NO. 1007 OF 2004.

Smt. Ishadevi Chedilal Gupta & Ors. ..Applicants.

VERSUS.

The New India Assurance Co.,
Ltd & Anr. ..Respondents

...

Mr. Sachindra B. Shetye for the applicants.

Mr.S.M.Vidyarthi for the Respondent No.1.

CORAM: S. B. MHASE &
R. S. MOHITE, JJ.

DATE : NOVEMBER 4, 2004.

P.C.:-

1. This application is for withdrawal of the amount deposited by the appellant-Insurance Company. The husband of the applicant No.1 has died in the motor accident. The vehicle, which was insured with the respondent No.1 - appellant, was belonging to the respondent No.2 herein. The amount deposited at the time of admission is Rs.14,86,128/- as per the award of the Motor Accident Tribunal. The applicant Nos. 2 to 7 are the children of the deceased and applicant No. 8 is the mother of the deceased. After the death of the husband of the

applicant, there is no male member supporting the family of the applicants. Under these circumstances, we find that it will be in the interest of the applicants to release 1/3rd amount without surety or security in favour of the applicants.

2. It is submitted by the learned counsel appearing on behalf of the applicants that the family is suffering under the agony and financial crisis, therefore, the total amount may be released. He submitted that ultimately it is money decree, therefore, the amount will have to be released. He further submitted that since there is a fatal accident, the speedy and immediate support to the family is needed and if the amount of compensation is not released in favour of the applicants, they will be suffering financial crunch. Learned counsel for the respondent - Insurance Company vehemently opposed the same. He submitted that there were no justifiable grounds to release the amount since the appeal is pending. The amount may not be released in favour of the applicants.
We do not find any merits in the said submissions.

3. We find it appropriate to release the 1/3rd amount without any surety or security and further 1/3rd amount with solvent surety to the satisfaction of the trial court. Remaining 1/3rd amount shall be deposited in

the Nationalised bank. We, therefore, pass following order.

:O R D E R.:

The Motor Accident Claims Tribunal, Thane is hereby directed to release the 1/3rd amount out of the amount deposited with the trial court without any surety or security in favour of the applicant Nos. 1 to 8.

It is further directed that further 1/3rd amount be released on furnishing a solvent surety to the satisfaction of the trial court and remaining 1/3rd amount be deposited in the Nationalised Bank, initially for a period of three years and if within the period of three years the appeal is not disposed of, the trial court shall go on investing, continuously thereafter on year to year basis, said amount till the disposal of this appeal. The interest which will be earned on this amount be periodically paid to the applicant Nos. 1 to 8.

Civil application is accordingly disposed of.

. All concerned, including the trial court, to act on an ordinary copy of this order duly authenticated by the Registry of this Court.

(R.S.MOHITE,J.) **(S.B.MHASE,J.)**